IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 1 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF GIFT TAX

Versus

MOHANLAL CHATURBHUJ

Appearance:

1. GIFT TAX REFERENCE No. 1 of 1989

MR TANVISH U BHATT for Petitioner No. 1

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 24/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this Reference at the instance of the revenue, the following question is referred for our opinion in respect of assessment year 1982-83:-

"Whether, the Tribunal is right in law and on facts in directing the GTO to apply the yield method as against applying Rule 1D of W.T. Rules, 1957 by the GTO for valuing the unquoted equity shares gifted by the assessee?"

2. Mr Tanvish Bhatt learned counsel appears for the revenue. Though served, none appears for the respondent assessee.

3. The controversy in this Reference is about the method of valuation to be applied for valuing the unquoted equity shares gifted by the assessee. The Gift Tax Officer valued the shares according to Rule 1D of the Wealth Tax Rules, 1957 rejecting the assessee's contention that the shares had to be valued as per the yield method. The Assistant Appellate Commissioner rejected the assessee's appeal. However, the Tribunal allowed the assessee's appeal and directed the Gift Tax Officer to apply the yield method.

4. At the hearing of this Reference, Mr Tanvish Bhatt for the revenue has invited our attention to the decision of the Supreme Court in the case of Bharat Hari Singhania vs. CWT (1994) 207 ITR 1 in support of his contention that Rule 1D providing for valuation of unquoted shares is mandatory in nature.

5. Having perused Rule 1D of the Wealth Tax Rules, 1957 which was applicable at the relevant period and the aforesaid decision, we are of the view that since Rule 1D providing for valuation of unquoted equity shares by the break-up method is mandatory in nature, the Tribunal was not justified in directing the GTO to value the shares according to the yield method.

6. In view of the above discussion, our answer to question referred to us is in the negative i.e. in favour of the revenue and against the assessee.

7. The Reference accordingly stands disposed of.

(M.S. Shah,J)

(K.A. Puj,J)

zgs/-